BAIL SLIP

Kishore the 4th Appellant herein (Accused NO. 5 on the file of the III Additional Sessions Judge, Chennai) was released on bail by the order of this Court dated 22.01.01 and made in CRL MP NO. 288/01 in CRL A NO. 859/00.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25-01-2007

CORAM

THE HONOURABLE MR.JUSTICE R.REGUPATHI

Crl. Appeal No.859 of 2000

1.Pukkraj
2.Kamalabai
3.Prakash
4.Kishore .. Appellants/Accused 1,2,3 and 5

Versus

State rep. By
Assistant Commissioner of Police,
Pulianthope Range,
P-2, Vyasarpadi Police Station,
Chennai-39. .. Respondent.

For Appellants : Mr.V.Gopinath Senior Counsel for
Mr.K.Selvarangan (A1)

Mr.U.Venkatesan
(A-2, A-3 and A-5)

For Respondent : Mr.N.Kumanan
Government Advocate (Criminal side)

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PRAYER: Appeal under Section 374 of Crl PC preferred against the order of judgment passed by the Hon'ble III Additional Sessions Judge, Chennai in SC.No.36 of 1999. dated 20.09.2000.

J U D G M E N T

The appellants are A-1, A-2, A-3 and A-5. A-1 and A-2 are the father-in-law and mother-in-law of the deceased and A-3 is the brother-in-law and A-5 is the husband of the deceased. A-4 is the sister-in-law of the deceased. Except

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A-4, all the accused have been convicted under Section 498A and 304(B) IPC and they have been sentenced to undergo imprisonment for 7 years for the offence under Section 304 B IPC and no separate sentence was imposed for the offence under Section 498A IPC. A-4 has been acquitted for the charges.

2. The marriage of the deceased with A-5 was performed on 30.05.1996 and at that time the deceased was given 1 kg of gold, 40 kgs of silver, One set of Diamond pair, cash of Rs.2,00,000/-, Air conditioner, Fridge, Vacum Cleaner, Two emergency lights, Kitchen wares, Furnitures, Dressing Table and Bureau and in spite of that the deceased was ill-treated was not given food and she was not permitted to use the air conditioner and a further demand of air cooler was made. In view of the said demand, the deceased was not leading a happy married life.

3. P.W.1, the father of the deceased on 04.09.1997 at 11.00 p.m received intimation about the sustaining of burn injuries by the deceased on account of accidental fire and about the admission of the deceased in the Apollo Hospital. He rushed to the Hospital and on enquiry with the deceased, the deceased alleged to have repeatedly stated that she got burn injuries due to accident. At the time when she made an attempt to pick up the chimney from the loft, the same has fallen on her, in the darkness and got burn injuries. P.W.1 suspected some foul play and therefore, gave a complaint against the accused on 05.09.1997.

4. P.W.2 is the mother of the deceased and she has corroborated the evidence of P.W.1. P.W.3 is the brother of the deceased and he also speaks about the dowry given to the deceased at the time of marriage and the further demand made to the deceased. P.W.4 and P.W.5 are neighbours and they have been cited as witnesses to speak about the disturbance of electricity supply on 04.09.1997 at about 9.00 p.m for a while and resumed after some time. However they have not supported the case of the prosecution and therefore treated hostile. P.W.6 is the driver of the accused, who has attested the observation mahazar and he has been treated hostile, as he has not supported the case of the prosecution. However, he has admitted the signature and the same has been marked as Ex.P-4. P.W.7 is the witness, who speaks about the recovery of the broken chimney glasses-M.O.1 and the burnt out clothings of the deceased-M.O.2 and M.O.3. Ex.P-6 is the Observation Mahazar. P.W.10 is the Assistant Engineer working in the electricity board and he has been examined to substantiate that there was continuous electricity supply on 04.09.1997 from 7.00 pm. to 10.00 p.m at the scene of occurrence and Ex.P-11 is the certificate issued by him.

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5. P.W.11 is the medical officer working in Apollo Hospital, Chennai, who speaks about the admission of the deceased on 04.09.1997 at about 9.30 p.m. The deceased was conscious at the time of admission and it was informed by the first accused that the deceased alleged to have sustained burn injuries at the time of attempting to get the chimney lamp.

6. P.W.15 is the Sub Inspector of Police attached with the Tiruvottriyur Police Station. On 04.09.1997 he received intimation from the Apollo Hospital at about 4.45 a.m (05.09.1997) and reached the Apollo hospital, Ward No.485 and received a statement from the deceased in the presence of the medical officer and the staff nurse. The deceased alleged to have stated that the chimney lamp accidentally fell on her at the time when she made an attempt to take it and sustained burn injuries. P.W.15 reached the police station and registered a case in Crime No.1021 of 1997 as fir accident as per Ex.P-18.

7. Thereafter, a requisition was made for recording the dying declaration. P.W.8 the Judicial Magistrate, Tiruvottriyur on receipt of the requisition Ex.P-7, reached the Apollo Hospital at 12.10 p.m and recorded the dying declaration of the deceased, Ex.P-8 in the presence of the medical officer. Questions were put to the deceased for which the deceased alleged to have stated that she made an attempt to get the chimney, which has fallen on her and thereby the deceased got burn injuries all over the body. P.W.8 has recorded that the deceased was conscious and the statement has been recorded in the presence of the medical officer.

8. P.W.16 took up the investigation on 05.09.1997, received the complaint-Ex.P-1 from the father of the deceased. Again on 07.09.1997, P.W.1 has given another report which has been marked as Ex.P-23. After receipt of such report, the offence has been modified into one under Section 498A and express report P-24 has been sent to the Magistrate. When he went to the Hospital to examine the deceased, he found her unconscious. He has examined the medical officers on 07.09.1997. On 08.09.1997 A-3 was arrested. On 14.09.1997 he has received an intimation from P.W.12 at about 3.15 p.m, regarding the death of the deceased and altered the offence into one under Sections 498A and 306 IPC. Thereafter sent a requisition to the RDO for conducting inquest through P.W.14 the Assistant Commissioner of Police.

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9. The RDO-P.W.13, reached the scene of occurrence on 15.09.1997 at about 3.30 p.m. During the course of inquest, he has examined the mother of the deceased who alleged to have stated that the deceased sustained injuries at the time when the deceased made an attempt to get the chimney for the purpose of going to the toilet, since there was no electricity at the time. Though the inquest has commenced on 15.09.1997, the witnesses were produced on 16.09.1997 and P.W.13 has opined after examination of five witnesses that the death of the deceased is due to the ill treatment of the accused. Ex.P-16 is the inquest report.

10. P.W.9 is the post mortem Doctor who attached to the Stanley Government Hospital, on receipt of the requisition-Ex.P-9, conducted post mortem on 16.09.1997 on the dead body of the deceased aged about 23 and opined that the death of the deceased was due to complication on account of burn injuries. Ex.P-10 is the post mortem report.

11. On the conclusion of the investigation and after receiving the reports, P.W.17, Assistant Commissioner of Police, filed a final report on 25.05.1998 under Section 498 A and 306 IPC.

12. Learned trial Judge questioned the accused under Section 313 Cr.P.C for which they have denied the offence and claimed innocence. The learned trial Judge after hearing both the parties convicted the accused as aforementioned. Aggrieved against the conviction and sentence, the appellants have preferred the present appeal.

13. The learned counsel appearing for the appellants submit that the occurrence took place at about 9.00 pm on 04.09.1997. The statement of the deceased given to the medical officers at the time of admission, to the Sub Inspector of Police P.W.15 at the time of giving the FIR, to the learned judicial Magistrate P.W.8, at the time of recording the dying declaration that she sustained injury accidentally at the time of taking the chimney, which has fallen on her, was consistent. In the contemporaneous medical records, namely, the accident register-Ex.P-12, the cause of the injury has been stated as follows:

"Sustained burns while trying to lit kerosene lantern".

14. P.W.1 has reached the Apollo hospital on the next day and even at that time the deceased was conscious. P.W.1 and P.W.2 spoken to her. It is the statement of P.W.1 that the deceased has stated that she has sustained injury only at the time of attempting to get the chimney lamp. However, only by suspecting foul play, a complaint has been given on

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05.09.1997.

15. It is the case of P.W.1 that the statement given by the deceased is not acceptable and the same has been made only at the instance of the accused. Such version of P.W.1 cannot be believed. In view of the contemporaneous other evidence available. Though it has been stated that there was demand of dowry, P.W.1 himself has admitted that those demands have not been stated at the time, when he was examined by the police. P.W.1 himself has admitted that the deceased has never returned to his residence after quarrelling with her husband. In such circumstances, submitted that neither of the offence is made out .

16. Learned counsel for the appellants submits that soon before the death of the deceased, the deceased was not subjected to harassment and cruelty and on a perusal of the materials available on record, the offence is not substantiated. It is the case of the deceased herself that she sustained injury only due to the accident and it is a natural death. To substantiate his contention, the learned counsel for the appellants relied on the cases reported in Kaliyaperumal and another Vs. State of Tamil Nadu (2004 SC (Cri) 1417) and Kamesh Panjiyar alias Kamlesh Panjiyar Vs. State of Bihar (2005 SCC (Cri) 511)

17. Per contra the learned Government Advocate submits that though the parents of the deceased reached the Hospital on 05.09.1997. The statement of the deceased that the death is due to accident, is unbelievable. P.W.1 to P.W.3 speak about the demand of dowry and quarrel on account of that. The accidental fire on account of the fall of chimney is not a believable one and the first accused who admitted the deceased initially, the deceased would have threatened and tutored to give such statement.

18. P.W.10 who is the Assistant Engineer, Electricity Board stated that the supply of the electricity was uninterrupted at the time of occurrence. Because of the seriousness and the nature of the injuries sustained, one can presume that such injury would not have been caused by the fall of a small chimney lamp and submitted that the case of the prosecution has been substantiated through P.W.1 to P.W.3 and other witnesses.

19. I have perused the materials available on record and heard the submissions made.

20. Admittedly the deceased was conscious at the time of admission in the Apollo Hospital at 9.30 p.m. The sincerity of admitting the deceased within ½ hour in a reputed private hospital by the first accused shows the bonafide interest of the first accused in saving the life

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of the deceased.

21. As soon as the intimation is received the, Sub Inspector of Police reached the hospital and the deceased was conscious. The FIR has been given by the deceased herself and this itself must be considered as a dying declaration. Though Ex.P-18 has been given to the Sub Inspector of Police, the bonafide of the same cannot be doubted, since the same has been attested by the medical officer. Intimation has been given to the Judicial Magistrate for recording the dying declaration and the dying declaration itself was recorded on the next day itself at about 12.10 p.m, in which the learned Magistrate after observing the formalities and ascertaining the consciousness of the deceased, recorded the dying declaration, wherein, the deceased has stated that the injury was sustained only due to the accident.

22. Even in the judicial dying declaration, the medical officer has attested, to substantiate the consciousness of the deceased. In Ex.P-12, the medical officer who has admitted the deceased has specifically mentioned that the injury has been sustained accidentally. Even at the time when the RDO conducted inquest over the dead body of the deceased on the next day of the occurrence, P.W.2 herself has stated that the death was due to accident.

23. On a perusal of the observation mahazar and rough sketch, the broken pieces of chimney has been mentioned. P.W.1 to P.W.3 came to the Hospital after she was admitted for burn injuries and in it appears that they made an attempt to elicit answers from the deceased, implicating the accused. It is the specific version of P.W.1 and P.W.2 in Ex.P-1 and Ex.P-23 that the deceased repeatedly answered that sustained injury was due to the accident.

24. Though P.W.5 has been cited by the prosecution to substantiate that the electricity supply was uninterrupted, in the cross examination, they have specifically stated that there was interruption of the supply of electricity on 04.09.1997. The statement of the deceased, receives corroboration from all these materials and I am of the view that such statement must be given importance and in the event of giving importance to such statement of the deceased, the offence under Section 304 B IPC is not made out. Even in so far as the ill-treatment and demand of dowry, the evidence of P.W.1 to P.W.3 is inconsistent and improvement has been made at the time when they have given evidence before the Court.

25. A-4 has been rightly acquitted by the trial Court, since there is no material to connect A-4 with the crime. Even in so far as the appellants are concerned, I do not

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find any material to substantiate that the deceased was subjected to cruelty and harassment soon before her death and there was any ill-treatment on account of demand of dowry. The death of the deceased was due to fire accident. In such circumstances, the conviction and sentence of the trial Court is set aside and the appellants are acquitted. The appeal is accordingly allowed. The bail bonds, if any, shall be executed by the accused shall stand cancelled.
Csh

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The III Additional Sessions Judge
2. - do - Thro The Principal Sessions Judge, Chennai
3. The V Metropolitan Magistrate, Egmore Chennai
4. - do - Thro The Chief Metropolitan Magistrate, Egmore, Chennai
5. The Superintendent, Central Prison for Women. Vellore
6. The Superintendent, Central Prison, Vellore
7.The Superintendent, Central Prison, Chennai - 3
8.The Public Prosecutor, High Court, Madras

9 The Assistant Commissioner of Police,
Pulianthope Range,
P-2, Vyasarpadi Police Station,
Chennai-39.

+ one cc to Mr. K. Selvarangan, Advocate sr no. 5089

KSJ(CO)
NM(03.02.07)

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